IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA
THIRD DIVISION

JUST TRUFFLES, INC. Plaintiff, vs. NONNIE WALLER'S TRADITIONAL SOUTHERN Defendant.	:	Case No. 0:07-cv-03212-JNE-JJG **DEFENDANT NONNIE'S TRADITIONAL SOUTHERN, LLC'S ANSWER TO PLAINTIFF'S COMPLAINT**

For its Answer to the Complaint of Plaintiff Just Truffles, Inc. (hereinafter "Plaintiff"), in this action, Defendant Nonnie's Traditional Southern, LLC, incorrectly denominated as Nonnie Waller's Traditional Southern (hereinafter "NTS"), through its undersigned counsel, hereby states that, except as hereafter expressly admitted, qualified, or otherwise stated, NTS denies each and every allegation, averment and assertion stated in Plaintiff's Complaint.

JURISDICTION AND VENUE

1. NTS is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 1 of Plaintiff's Complaint and therefore denies the same.

2. NTS admits that Nonnie's Traditional Southern, LLC is a limited liability company organized and existing under the laws of the state of Ohio which has a principal place of business at 1 Bellbrook Ave., Spring Valley, OH 54370 and/or 1070 Parker Road, Jamestown, OH 45335.

3. With Respect to the allegations contained in Paragraph 3 of the Complaint, NTS is opposed to any amendment of the Complaint except as in accordance with Fed. R.

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Civ. P. 15, and therefore denies the allegations contained in paragraph 3 of Plaintiff's Complaint.

4. NTS is without sufficient information or knowledge to form a belief as to the truth of Plaintiff's allegation that it is a corporation incorporated under the laws of the State of Minnesota and therefore denies the same. NTS admits that Nonnie's Traditional Southern, LLC is a limited liability company organized and existing under the laws of the state of Ohio, and has a principal place of business in a state other than the State of Minnesota.

5. With respect to the allegations contained in Paragraph 5 of Plaintiff's Complaint, NTS admits that this Court has subject matter jurisdiction over matters arising under the Trademark Laws of the United States and Federal Claims for Unfair Competition. NTS denies the remainder of the allegations contained in Paragraph 5 of Plaintiff's Complaint.

6. NTS admits the allegations contained in Paragraph 6 of Plaintiff's Complaint but states that venue is not appropriate or convenient within the meaning of 28 U.S.C. Section 1404. NTS affirmatively states that it reserves the right to seek a transfer of venue to the United States District for the Southern District of Ohio, or any other proper venue.

COUNT I

(FEDERAL TRADEMARK INFRINGEMENT)

7. Answering paragraph 7of the Complaint, NTS realleges and incorporates by reference the foregoing.

8. NTS is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 8 of Plaintiff's Complaint and therefore denies the same.

9. NTS is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 9 of Plaintiff's Complaint and therefore denies the same.

10. NTS admits, upon information and belief, that Plaintiff filed an application with the United States Patent and Trademark Office to register the trademark JUSTRUFFLES, and that a corresponding registration issued for that mark on or about March 25, 1997. NTS is without sufficient information or knowledge to form a belief as to the truth of the remainder of the allegations contained in Paragraph 10 of Plaintiff's Complaint and therefore denies the same.

11. With respect to the allegations contained in Paragraph 11 of Plaintiff's Complaint, NTS admits that it uses the words "Just Truffles" on its website. NTS denies the remainder of the allegations in paragraph 11 of Plaintiff's Complaint and specifically denies that Defendant has any trademark rights in the phrase "Just Truffles" and that NTS has ever infringed upon or used Plaintiff's JUSTRUFFLES mark.

12. NTS denies the allegations contained in Paragraph 12 of Plaintiff's Complaint.

COUNT II

(MINNESOTA STATUTORY UNFAIR COMPETITION

(Minn. Stat. § 325D.44)

13. Answering paragraph 13 of the Complaint, NTS realleges and incorporates by reference the foregoing.

14. NTS denies the allegations contained in Paragraph 14 of Plaintiff's Complaint.

COUNT III

(FEDERAL UNFAIR COMPETITION)

(15 U.S.C. § 1125(A))

15. Answering paragraph 15 of Plaintiff's complaint, NTS realleges and incorporates by reference the foregoing.

16. Defendant denies the allegations contained in Paragraph 16 of Plaintiff's complaint and specifically denies that Plaintiff has any trademark rights in the words "Just Truffles."

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

17. Plaintiff's Complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

18. Plaintiff's claims are barred by the doctrines of waiver, laches, acquiescence and/or estoppel.

THIRD AFFIRMATIVE DEFENSE

19. Defendant has not infringed and is not infringing upon any trademark of Plaintiff.

FOURTH AFFIRMATIVE DEFENSE

20. Plaintiff's trademark has not acquired secondary meaning.

FIFTH AFFIRMATIVE DEFENSE

21. Plaintiff's trademark is invalid because the asserted mark is not associated exclusively as originating from Plaintiff as specified in Part II of Title 15 of the U.S. Code.

SIXTH AFFIRMATIVE DEFENSE

22. Plaintiff's alleged trademark is invalid because it is or has become generic, and is not associated exclusively with Plaintiff's product.

SEVENTH AFFIRMATIVE DEFENSE

23. Plaintiff's asserted trademark is invalid because the alleged mark fails to meet the condition of non-functionality.

EIGHTH AFFIRMATIVE DEFENSE

24. Plaintiff's claim is barred pursuant to 15 U.S.C. §1115 (b) (4) because, among other things, any use of the name or term "Just Truffles" by Defendant is descriptive of and used fairly and in good faith only to describe the goods and services of Defendant.

NINTH AFFIRMATIVE DEFENSE

25. Plaintiff's claim is barred pursuant to 15 U.S.C. §1115 (b) (5) because NTS has used the mark "Just Truffles" continuously and without prior knowledge during the applicable time period.

TENTH AFFIRMATIVE DEFENSE

26. Plaintiff has failed to give notice that the term "Just Truffles" is trademarked, and is therefore precluded from collecting damages for any alleged infringement or unfair competition.

ELEVENTH AFFIRMATIVE DEFENSE

27. Plaintiff's claim is barred because of insufficiency of process and/or failure of service of process upon Nonnie's Traditional Southern, LLC.

TWELFTH AFFIRMATIVE DEFENSE

28. This Court is not the proper or appropriate venue for this action pursuant to 28 U.S.C. Section 1404.

Defendant reserves the right to add additional affirmative defenses should the investigation of this claim, or discovery demonstrate their applicability.

THIRTEENTH AFFIRMATIVE DEFENSE

29. Plaintiff's claims is barred under the doctrine of unclean hands.

COUNTERCLAIM FOR DECLARATORY RELIEF

Defendant, Nonnie's Traditional Southern, LLC, incorrectly denominated as Nonnie Waller's Traditional Southern in Plaintiff's Complaint (hereinafter "NTS"), by and through its undersigned counsel, realleges and incorporates by reference the preceding paragraphs of its Answer as though fully set forth herein and states the following for its Counterclaim against Plaintiff:

1. This Court has original jurisdiction over this Counterclaim pursuant to 28 U.S.C. § 1332.

2. This is an action for Declaratory Judgment of invalidity, non-infringement and unenforceability. Subject matter jurisdiction is based herein upon Title 28, Sections 1331, 1338 and 2201 and 2202 and under the Federal Trademark Act, 15 U.S.C. Section 1051 et seq.

3. Upon information and belief, the Plaintiff filed for trademark registration of the mark “JUSTRUFFLES” and a registration was issued on or about March 25, 1997.

4. Plaintiff has not obtained any trademark registration for the term or mark “Just Truffles.”

5. Plaintiff claims ownership in the term “Just Truffles” under the trademark laws and further claims that NTS’ use of the term “Just Truffles” is confusingly similar to Plaintiff’s mark and that NTS has no right to use the term “Just Truffles” in connection with the marketing of NTS’ goods and/or services.

6. NTS has used the term “Just Truffles” in connection with marketing its goods and/or services.

7. NTS has not infringed and is not now infringing upon Plaintiff’s trademark.

8. Plaintiff’s trademark is invalid because the alleged mark has failed to meet the condition of non-functionality and has not acquired secondary meaning, i.e., wherein said asserted mark is not associated exclusively as originating from Plaintiff as specified in Part II of Title 15 of the U.S. Code.

9. Defendant is entitled to use the term “Just Truffles” pursuant to 15 U.S.C. §1115 (b) (4) because it is descriptive of and used fairly and in good faith only to describe the goods and services of Defendant.

10. Plaintiff's statements and conduct, including the filing of this action, demonstrates that an actual controversy exists between the parties hereto regarding the validity, enforceability and infringement of Plaintiff's trademark. By reason thereof, NTS is entitled to a binding declaration clarifying the parties' rights and declaring that NTS' use of the words "Just Truffles" on its website does not infringe Plaintiff's trademark rights in the mark JUSTRUFFLES.

PRAYER FOR RELIEF

WHEREFORE, Defendant Nonnie's Traditional Southern, LLC, incorrectly denominated as Nonnie Waller's Traditional Southern in Plaintiff's Complaint, prays for judgment on Plaintiff's allegations contained in the Complaint and on NTS' counterclaim as follows:

(A) That Plaintiff's claims be dismissed with prejudice and on the merits and that Plaintiff's requests for relief be denied;

(B) That the court enter judgment against Plaintiff and in favor of NTS in all respects;

(C) For a judicial determination and declaration clarifying the parties' rights and declaring that NTS has not infringed upon any trademark right of Plaintiff.

(D) That this Court enter an Order declaring that Plaintiff's asserted trademarks are invalid, void and without force and effect;

(E) That this Court enter an Order declaring that NTS' use of the term "Just Truffles" does not violate Plaintiff's rights under the trademark laws of the United States and the State of Minnesota;

(F) That this Court enter an Order declaring that Plaintiff be preliminarily and permanently enjoined from interfering with NTS' use of the term "Just Truffles" in connection with the marketing of NTS' goods and/or services;

(G) That this Court award NTS its attorney's fees, costs, and expenses in this action pursuant to 15 U.S.C. Section 117 and otherwise; and

(H) That this Court grant such other and further relief as it may deem just, equitable and proper.

JURY TRIAL DEMAND

Defendant NTS requests that a jury trial be held on all issues triable as of right by jury with respect to the parties' claims.

Dated: August 6, 2007

Respectfully Submitted,

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